

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
PART 1702
EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO
THE EXTRACTION OF OTHER MINERALS

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AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 15 Ill. Reg. 17123, effective January 1, 1992; amended at 17 Ill. Reg. 11031, effective July 1, 1993; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 22 Ill. Reg. 7712.

Section 1702.1 Scope

This Part implements the exemption contained in Section 1.06(b) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7901.06(b)) (State Act) concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total mineral tonnage mined for purposes of commercial use or sale.

Section 1702.5 Definitions

As used in this Part, the following terms have the meaning specified, except where otherwise indicated:

- a) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

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- 1) For purposes of determining the beginning of the cumulative measurement period, subject to the Department's approval, the operator must select and consistently use one of the following:
 - A) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or
 - B) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area.
 - 2) For annual reporting purposes pursuant to Section 1702.18, the end of the period for which cumulative production and revenue is calculated is either:
 - A) For mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or
 - B) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.
 - b) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by Section 1702.16.
 - c) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.
 - d) "Mining area" means an individual excavation site or pit from which coal, other minerals and overburden are removed.
 - e) "Other minerals" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

Section 1702.10 Information Collection

The collections of information contained in Sections 1702.11, 1702.12, 1702.13, 1702.15 and 1702.18 will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with Section 1.06(b) of the State Act.

Section 1702.11 Application Requirements and Procedures

- a) Application for exemption.
 - 1) Any person who plans to commence or continue coal extraction after the effective date of this Part in reliance on the incidental mining exemption shall file a complete application for exemption with the Illinois Department of Natural Resources, Office of Mines and Minerals (Department) for each mining area.
 - 2) No person may commence coal extraction based upon the exemption until the Department approves such application for exemption, except as provided in subsection (e)(3) below.
- b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of this Part may continue mining operations for sixty (60) days after such effective date. Coal extraction may not continue after such sixty (60) day period unless that person files an administratively complete application for exemption with the Department. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the Department makes an administrative decision on such application.
- c) Additional information. The Department shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.
- d) Public comment period. Written comments or objections to an application for exemption may be submitted to the Department by any person having an interest which is or may be adversely affected by the decision on the application within thirty (30) days after the newspaper notice required by Section 1702.12(i).
- e) Exemption determination.
 - 1) No later than ninety (90) days after the filing of an administratively complete application, the Department shall make a written determination whether, and under what conditions, the persons claiming the exemption

are exempt under this Part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

- 2) The determination of exemption shall be based upon information contained in the application and any other information available to the Department at that time.
 - 3) If the Department fails to provide an applicant with the determination as specified in subsection (e)(1) above, an applicant who has not begun may commence coal extraction pending a determination on the application unless the Department issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.
- f) Administrative hearing.
- 1) Any adversely affected person may request administrative review of a determination under subsection (e) above within thirty (30) days of the notification of such determination in accordance with procedures established under 62 Ill. Adm. Code 1847.3. The hearing shall be conducted in accordance with 62 Ill. Adm. Code 1847.3.
 - 2) A petition for administrative hearing filed in accordance with 62 Ill. Adm. Code 1847.3 shall not suspend the effect of a determination under Section 1702.11(e) above.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)

Section 1702.12 Contents of Application for Exemption

An application for exemption shall include:

- a) The name and address of the applicant;
- b) A list of the minerals sought to be extracted;
- c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

- e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- f) The basis of annual production, revenue, and fair market value estimates;
- g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
- h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operations;
- I) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Department. The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation;
- j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;
- k) A map of appropriate scale which clearly identifies the mining area;
- l) A general description of mining and mineral processing activities for the mining area;
- m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;
- n) If the other minerals are to be commercially used by the applicant, a description specifying the use;
- o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:
 - 1) Any documents the operator has received from the Department documenting its exemption from the requirements of the State Act;

- 2) The cumulative production of the coal and other minerals from the mining area;
- 3) Estimated tonnages of stockpiled coal and other minerals; and
- p) Any other information the applicant believes is pertinent to the qualification of the operation as exempt.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)

Section 1702.13 Public Availability of Information

- a) Except as provided in Section 1702.13(b), all information submitted to the Department under this Part shall be made immediately available for public inspection and copying at the Department's Springfield and Benton Land Reclamation Division Offices until at least three (3) years after expiration of the period during which the subject mining area is active.
- b) The Department may keep information submitted under this Part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this Part.
- c) Information requested to be held as confidential under Section 1702.13(b) shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 1702.14 Requirements for Exemption

- a) Activities are exempt from the requirements of the State Act if all of the following are satisfied:
 - 1) The cumulative production of coal extracted from the mining area determined annually as described in this Section does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.
 - 2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

- 3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed fifty (50) percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.
- b) Persons seeking or that have obtained an exemption from the requirements of the State Act shall comply with the following:
 - 1) Each other mineral upon which an exemption under this Part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.
 - 2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

Section 1702.15 Conditions of Exemption and Right of Inspection and Entry

- a) A person conducting activities covered by this Part shall:
 - 1) Maintain on-site or at other locations available to authorized representatives of the Department or the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Department;
 - 2) Notify the Department upon the completion of the mining operation or permanent cessation of all coal extraction activities; and
 - 3) Conduct operations in accordance with the approved application or when authorized to extract coal under Section 1702.11(b) or Section 1702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this Part.

- b) Authorized representatives of the Department or the Secretary shall have the right to conduct inspections of operations claiming exemption under this Part.
- c) Each authorized representative of the Department or the Secretary conducting an inspection under this Part:
 - 1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;
 - 2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and
 - 3) Shall have a right to gather physical and photographic evidence to document conditons, practices or violations at a site.
- d) No search warrant shall be required with respect to any activity under Section 1702.15(b) and (c), unless otherwise required by the Criminal Code of 1961. (Ill. Rev. Stat. 1989, ch. 38, pars. 108-1 et seq.)

Section 1702.16 Stockpiling of Minerals

- a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:
 - 1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or
 - 2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.
- b) Other minerals.
 - 1) The Department shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if the operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles, or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

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- 2) The Department may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if:
 - A) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and
 - B) Except as provided in Section 1702.16(b)(3), the stockpiled other minerals do not exceed the 12-month supply of the mineral required for future sales as approved by the Department on the basis of the exemption application.
 - 3) The Department may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Section 1702.16(b)(2) if the operator can demonstrate to the Department's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.
 - 4) The Department may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Sections 1702.16(b)(2) and (3) based on additional information available to the Department.

Section 1702.17 Revocation and Enforcement

- a) Department responsibility. The Department shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to Section 1702.18, an on-site inspection and any other information available to the Department.
- b) If the Department has reason to believe that a specific mining area was not exempt under the provisions of this Part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department shall notify the operator that the exemption may be revoked unless the operator demonstrates to the Department within thirty (30) days that the mining area in question should continue to be exempt.
- c) Exemption revocation.
 - 1) If the Department finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the

Department shall revoke the exemption and immediately notify the operator and any person having an interest which is or may be adversely affected by the revocation and any person who submitted written comments or objections to the exemption application pursuant to Section 1702.11(d). If a decision is made not to revoke an exemption, the Department shall immediately notify the operator and any person having an interest which is or may be adversely affected by the decision and any person who submitted written comments or objections to the exemption application pursuant to Section 1702.11(d).

- 2) Any person having an interest which is or may be adversely affected may request administrative hearing of a decision whether to revoke an exemption within thirty (30) days of the notification of such decision in accordance with procedures established under 62 Ill. Adm. Code 1847.3.
 - 3) A petition for administrative hearing filed under 62 Ill. Adm. Code 1847.3 shall not suspend the effect of a decision whether to revoke an exemption.
- d) Direct enforcement.
- 1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.
 - 2) An operator who does not conduct activities in accordance with the terms of an approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.
 - 3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of 62 Ill. Adm. Code 1800-1850 with regard to conditions, areas and activities existing at the time of revocation or denial.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)

Section 1702.18 Reporting Requirements

- a) Written report.
 - 1) Following approval by the Department of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a

written report annually with the Department containing the information specified in subsection (b) below.

- 2) The report shall be filed no later than thirty (30) days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in Section 1702.5.
- 3) The information in the report shall cover:
 - A) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and
 - B) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.
- b) For each period and mining area covered by the report, the report shall specify:
 - 1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;
 - 2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;
 - 3) The number of tons of coal stockpiled;
 - 4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;
 - 5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and
 - 6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

(Source: Amended at 17 Ill. Reg. 11031, effective July 1, 1993)